STATE OF MICHIGAN

COURT OF APPEALS

In re THOMAS, Minors.

UNPUBLISHED
August 20, 2020

No. 352575
Oakland Circuit Court
Family Division
LC No. 2019-075774-NA

Before: REDFORD, P.J., and METER and O'BRIEN, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order placing her minor children, ET and MT, in protective custody pending adjudication and disposition of petitioner, the Department of Health and Human Services', petition to terminate her parental rights. We affirm.

I. BACKGROUND

In November 2019, petitioner offered for authorization a permanent custody petition seeking removal of ET and MT from the home of respondent and the father[1], and termination of the parents' parental rights. The petition alleged that the parents had a long history with Children's Protective Services (CPS), including 90 complaints. The petition alleged that respondent's parental rights had been terminated as to the children's six older siblings. The petition alleged ongoing domestic violence and substance abuse in the home, as well as physical and sexual abuse and medical neglect of ET and MT. A CPS investigator testified regarding the allegations at a protective custody hearing the same day the petition was offered. The trial court entered an order removing the children from the home. The next day, a referee held a preliminary hearing at which the parents asserted that the father had Native American heritage. Respondent's counsel stated that respondent had provided her with documents showing that some unidentified portion of the allegations in the current petition had been dismissed in a previous case. Respondent's counsel did not provide the court with any evidence or identify which of the allegations respondent was contesting. The trial court entered an order adjourning the preliminary hearing for petitioner to

[1] Although the father was party to petitioner's permanent custody petition, we note that the father is not party to this appeal.

investigate the father's claim of Native American heritage and continued the protective custody order. Respondent now appeals.

II. PROTECTIVE CUSTODY ORDER

Respondent argues that the trial court clearly erred in removing the children because 1) it did not make requisite findings that staying in the home was contrary to the children's welfare and that petitioner made reasonable efforts to prevent removal, and 2) petitioner did not produce any valid evidence to support such findings because petitioner's allegations had already been dismissed in a previous case. We disagree.

This Court reviews a trial court's findings of fact in child protective proceedings for clear error. *In re Gonzalez/Martinez*, 310 Mich App 426, 430; 871 NW2d 868 (2015). A finding is clearly erroneous if "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009) (quotation marks and citations omitted). This Court must consider "the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011).

The trial court did not clearly err in removing the children from respondent's home because, contrary to respondent's assertions, the trial court made all findings necessary to enter a protective custody order under MCR 3.963(B), and there was evidence to support those findings that postdated any previous case involving the family.

MCR 3.963(B)(1) provides the steps a court must take before placing a child in protective custody:

> (1) *Order to Take Child into Protective Custody*. The court may issue a written order . . . to immediately take a child into protective custody when, after presentment of a petition or affidavit of facts to the court, the court has reasonable cause to believe that all the following conditions exist, together with specific findings of fact:
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> > (a) The child is at substantial risk of harm or is in surroundings that present an imminent risk of harm and the child's immediate removal from those surroundings is necessary to protect the child's health and safety. . . .
> >
> > (b) The circumstances warrant issuing an order pending a hearing in accordance with:
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> > > (*i*) MCR 3.965 for a child who is not yet under the jurisdiction of the court, or
> > >
> > > (*ii*) MCR 3.974(C) for a child who is already under the jurisdiction of the court under MCR 3.971 or 3.972.
> >
> > (c) Consistent with the circumstances, reasonable efforts were made to prevent or eliminate the need for removal of the child.

> (d) No remedy other than protective custody is reasonably available to protect the child.
>
> (e) Continuing to reside in the home is contrary to the child's welfare.

In this case, the children were not yet under the jurisdiction of the court. Therefore, the court was required, under MCR 3.963(B)(1)(b)(*i*), to make findings in accordance with MCR 3.965 before entering a protective custody order. MCR 3.965(C) provides, in relevant part:

> (3) *Contrary to the Welfare Findings*. Contrary to the welfare findings must be made. If placement is ordered, the court must make a statement of findings, in writing or on the record, explicitly including the finding that it is contrary to the welfare of the child to remain at home and the reasons supporting that finding. If the "contrary to the welfare of the child" finding is placed on the record and not in a written statement of findings, it must be capable of being transcribed. The findings may be made on the basis of hearsay evidence that possesses adequate indicia of trustworthiness. If continuing the child's residence in the home is contrary to the welfare of the child, the court shall not return the child to the home, but shall order the child placed in the most family-like setting available consistent with the child's needs.
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> (4) *Reasonable Efforts Findings*. Reasonable efforts findings must be made. In making the reasonable efforts determination under this subrule, the child's health and safety must be of paramount concern to the court. When the court has placed a child with someone other than the custodial parent, guardian, or legal custodian, the court must determine whether reasonable efforts to prevent the removal of the child have been made or that reasonable efforts to prevent removal are not required. The court must make this determination at the earliest possible time, but no later than 60 days from the date of removal, and must state the factual basis for the determination in the court order. Nunc pro tunc orders or affidavits are not acceptable. Reasonable efforts to prevent a child's removal from the home are not required if a court of competent jurisdiction has determined that
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> (c) parental rights of the parent with respect to a sibling have been terminated involuntarily[.]

Respondent first argues that the trial court did not make, in writing or on the record, contrary to the welfare findings and reasonable efforts findings. Respondent's argument is without merit. The referee recommended, and the trial court adopted, specific contrary to the welfare findings and reasonable efforts findings in its written protective custody order. The next day, the trial court entered an order adjourning the preliminary hearing and continuing the protective custody order. That order explicitly stated that contrary to the welfare findings and reasonable efforts findings were made in the protective custody order. Therefore, respondent's argument that the trial court failed to make the requisite findings has no basis in fact.

Respondent argues that the trial court's findings were unsupported by valid evidence because the allegations in the petition had already been dismissed in a previous case. This argument is also without merit. Respondent first faults the trial court for relying solely on the petition and the CPS investigator's testimony. The plain language of MCR 3.963(B)(1) permits a court to make the findings necessary to support a protective custody order solely based on the "presentment of a petition or affidavit of facts . . . ." Based on the petition and the CPS investigator's testimony at the protective custody hearing, the trial court found that "continuing to reside in the home is *contrary to the child(ren)'s welfare* because:"

> Respondent mother and respondent father have failed to protect their children and the home environment is unfit for children. Respondent father has a history of untreated mental health issues. Respondent father is diagnosed with Bipolar disorder but does not take any medications. Respondent father has an extensive domestic violence history that dates to 1996. Respondent father's brother, a registered sex offender, has been allowed to live in the home with the children. Respondent mother physically disciplined one of the children [and] left a bruise on their thigh. Respondent mother had her parental rights terminated to six children for failing to engage in services and a domestic violence program.
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> Respondent parents have neglected the health and welfare of their children. It was reported by one of the children that the ten-year-old girl was being touched inappropriately by respondent mother's adult son. A CARE House interview was offered, but parents refused. The seven-year-old is still not potty trained and has been acting out sexually. . . . The seven-year-old had multiple tooth abscesses but parents did not follow through with his dental care. The children show up to school wearing the same clothes for weeks at a time, unkempt and dirty.

At the preliminary hearing the next day, respondent's counsel stated that respondent had provided her with documents showing that numerous allegations in the petition had already been addressed and dismissed. Counsel did not did not present any evidence to the referee or specify which allegations or findings respondent was contesting. The trial court continued the protective custody order.

Respondent then filed a motion for rehearing. Respondent asserted that unidentified "family members" have been attempting to gain custody of the children for over a year. Respondent attached an order dismissing a petition in August 2018. She further asserted that some unidentified portion of the allegations in the current petition were investigated, found to be unsubstantiated, and expunged from petitioner's State Child Abuse and Neglect Central Registry on April 24, 2019. She asserted that the children were receiving adequate medical, dental, and mental health care; that ET's pediatrician had examined her bruise and found no evidence of abuse; and that MT's behavioral issues at school were out of respondent's control.

Even if the trial court had credited respondent's assertions—which it was not required to do—petitioner still presented sufficient evidence to establish "reasonable cause to believe" that the children should be removed from respondent's home. MCR 3.963(B)(1). The petition and the CPS investigator stated multiple facts that postdate April 24, 2019—the date on which respondent asserts that all allegations were finally resolved in her favor. Contrary to respondent's assertion

that petitioner ignored the existence of previous cases throughout this case, the petition itself contains a detailed history.

The petition admits that a November 21, 2018 petition alleging that the father's brother had sexually abused ET was "later dismissed on [December 3, 2018,] so that [petitioner] could do more investigating." Respondent's argument does not address petitioner's contention that ET disclosed, on October 30, 2019, that the father's brother still lived in the home. On September 24, 2019, MT told CPS that the father spits in respondent's face and threatens to poke her eye out. The father refused to be drug tested on September 26, 2019. Also on September 26, 2019, respondent's older daughter told CPS that she had witnessed domestic violence that occurred in ET and MT's presence. The police responded to domestic disputes at the home on September 28, 2019 and September 29, 2019. The petition alleged that, on October 29, 2019, CPS received a complaint alleging that respondent had "grabbed [ET] by her face and head and was screaming at her, [MT] was acting out sexually toward [ET,] and allegations that her adult brother residing in the home . . . has been touching [ET] inappropriately." ET told CPS on October 30, 2019, that respondent and father fight every day, and "[a]ll hell breaks loose." CPS observed ET and MT at school on October 30, 2019, at which time "both appeared unbathed and unkempt" and "had a pungent odor of cigarette smoke." MT's teacher told CPS that MT had been wearing the same clothing to school every day for three weeks. The petition alleged that respondent, at the request of CPS, scheduled MT for a dental appointment on October 9, 2019, but the parents again failed to take him. Although the "first phase" of MT's dental procedures were completed on November 4, 2019, continuing follow-up visits would be necessary.

The CPS investigator reiterated this post-April 2019 information in her testimony. Even if respondent's contention that some allegations were dismissed in December 2018, and expunged from petitioner's central registry in April 2019, is true, respondent does not rebut the information that petitioner gathered after April 2019. In addition, respondent provides no authority for the proposition that petitioner is barred from restarting an investigation and offering, on the basis of new information, a petition similar to one that was dismissed in the past. Therefore, the trial court did not clearly err in finding that it was contrary to the children's welfare to remain in respondent's home.

Lastly, respondent argues that the trial court did not make required findings that petitioner made reasonable efforts to prevent removal. In its protective custody order, the trial court explicitly found that "*reasonable efforts* were made to prevent or eliminate the need for removal of the children as follows:"

> Respondent mother and respondent father have been interviewed along with family members, law enforcement, school officials, and medical personnel. Multiple CARE House interviews have been offered. The prior CPS histories have been reviewed. Prior services offered have been Families First, HAVEN, PACE assessments, Families Together Building Solutions, Wraparound, and drug screens. Multiple CPS interventions have been done with both respondent parents. A safety plan was implemented as well.

This Court need not examine that adequacy of these services because it is undisputed that respondent's parental rights to six of the children's siblings were involuntarily terminated. Under

MCR 3.965(C)(4)(c), "[r]easonable efforts to prevent a child's removal from the home are not required if a court of competent jurisdiction has determined that . . . parental rights of the parent with respect to a sibling have been terminated involuntarily." See also *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009) ("Petitioner, however, is not required to provide reunification services when termination of parental rights is the agency's goal."). Therefore, the trial court did not err in entering an order to remove the children from respondent's home and place them in protective custody.

Affirmed.

/s/ James Robert Redford
/s/ Patrick M. Meter
/s/ Colleen A. O'Brien